

Sorenson Law Office  
PO Box 10836  
Eugene, OR 97440

Practice Limited to FOIA Requests, FOIA Appeals, and FOIA Litigation

November 16, 2016

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

RE: FOIA Request of Sorenson Law Office

SENT VIA FIRST CLASS MAIL CERTIFIED RETURN RECEIPT REQUESTED

Dear United States Environmental Protection Agency Freedom of Information Act Officer:

I am writing on behalf of my client, SORENSON LAW OFFICE, PO Box 10836, Eugene, Oregon 97440.

**I. Request**

This request concerns non-exempt responsive records compiled by the Environmental Protection Agency (EPA) and contractors working for the EPA regarding the Smart Way Program generally and specifically the records concerning the Smart Way verification for a specific product, the Smart Truck brand's TopKit.

SORENSON LAW OFFICE requests copies of:

1. All records, including reports, emails, summaries, track testing notes, engineering reports and similar records concerning the testing of the SmartTruck brand TopKit.
2. The Smartway verification site lists that the Coast Down testing method was used. Please provide all records, including reports, emails, summaries, track testing notes, engineering reports and similar records concerning the Coast Down testing, with and without the TopKit. This testing, which we believe was conducted between 2013 and 2015 was conducted on a certified track showing the comparison of how far the truck and tractor travel with and without the TopKit. Our request is inclusive of the type of equipment, for example, the tractor and trailer, used in the coast down testing.

3. If the Coast Down method was not used, please provide all records, including reports, emails, summaries, track testing notes, engineering reports and similar records concerning the testing, with and without the TopKit.

4. All records, including reports, emails, summaries, track testing notes, engineering reports and similar records concerning the testing of the SmartTruck brand TopKit and specifically referred to on the SmartTruck website (<http://smarttruckaero.com/our-story/testing-validation/>): "Coast Down Testing is currently accepted in EPA's Heavy Duty Vehicle Fuel Efficiency regulation. EPA points to coast down testing as the Reference Method for determining the aerodynamic performance of a vehicle. Coast down testing allows for the specific determination of a vehicle's aerodynamic and mechanical (rolling resistance/friction drag) drag. All SmartTruck products have been performance-validated through coast down testing at either Michelin's Laurens Proving Grounds in Mountville, SC, or at the Kennedy Space Center at the Shuttle Landing Facility. This coast down testing is used to validate the results achieved in our predictive CFD modeling."

## **II. Time Frame of this Request**

The time frame for records sought by this FOIA request is from January 1, 2012 to the present.

## **III. How Responsive Records Should Be Provided**

SORENSEN LAW OFFICE requests copies of the responsive records for this FOIA request be provided in a digital format, either via email, or stored on a CD or other electronic data storage device. See 5 U.S.C. § 552 (a)(3)B). Providing these records in an electronic format will save agency staff processing time, as well as reducing the cost of making paper copies of all responsive records.

## **IV. Policy and Legal Direction for Open Government**

The disclosure of the above referenced agency records are also sought in order to promote government transparency, and to reflect the Obama administration's policy to support our nation's fundamental commitment to open government, and a presumption of disclosure, as set forth in both former Attorney General Holder's March 29, 2009 FOIA Memorandum to all Executive Departments and Agencies, and in the FOIA policies announced by President Obama's January 21, 2009 Freedom of Information Act Memorandum to all federal agencies.

As the Supreme Court has observed, "virtually every document generated by an agency is available in one form or another, unless it falls within one of the Act's nine exemptions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975). FOIA was designed to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny," see, e.g., *Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976), and in order "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).



The above described agency records are subject to disclosure under FOIA, and are not otherwise exempt from disclosure pursuant to FOIA's nine statutory exemptions. See 5 U.S.C. § 552(b)(1) - (9). To the extent that a determination is made by your FOIA office staff that any limited portions of the records listed above will be withheld from disclosure for this request, FOIA expressly requires all agencies to disclose "[a]ny reasonably segregable portion of a record after deletion of the portions of the record which are exempt." 5 U.S.C. § 552(b). See, e.g., *Oglesby v. U.S. Dept. of Army*, 79 F.3d 1172, 1178 (D.C. Cir. 1996); see also *Abdelfattah v. U.S. Dept. Of Homeland Security*, 488 F.3d 178, 186-187 (3rd Cir.).

The 2007 Openness Promotes Effectiveness in our National Government Act amendments to FOIA (the "OPEN Government Act") requires identification of the amount of any material withheld, the location of any withholdings, a direct reference to the specific statutory exemption supporting each withholdings asserted, and if technically possible, also require that this information shall "be indicated at the place in the record where such deletion is made." See 5 U.S.C. § 552(b). Therefore, I would appreciate your assistance in expressly identifying any exempt responsive records (or portions thereof) and the applicable FOIA exemptions for any responsive materials withheld for this FOIA request.

Please inform my office if there are any "unusual circumstances" that will cause delay in responding to this FOIA request, or providing the records which are requested, and in addition, please provide the approximate date that you anticipate a final response will be provided.

#### **V. Payment for Processing Costs**

Please inform our office of the estimated amount of processing cost you anticipate. SORENSON LAW OFFICE does not agree to pay any amount for search, duplication and processing costs.

#### **VI. Contact**

Please provide a receipt for this email and provide a tracking number so that we may inquire about the status of this request.

If you have any questions regarding this FOIA request, or if I can be of any other assistance, please feel free to contact me at (541) 606-9173, or via email to [petesorenson@gmail.com](mailto:petesorenson@gmail.com)

Thank you in advance for your assistance.

Very truly yours,



C. Peter Sorenson\*

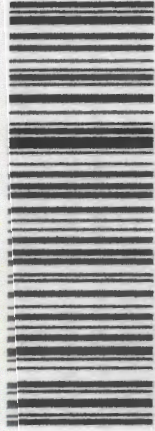
Sorenson Law Office

\*licensed by the District of Columbia Court of Appeals, United States District Court for the District of Columbia, United States Court of Appeals for the District of Columbia Circuit.

Oregon Supreme Court (1982) and Supreme Court of the United States of America: law practice limited to Freedom of Information Act (FOIA) requests, FOIA administrative appeals and FOIA litigation

FREEDOM OF INFORMATION ACT REQUEST

Sorenson Law Office  
P.O. Box 10836  
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